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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/076,231 | 02/14/2002 | Charlotte Johansen | 10151.200-US | 1015 |

25908 7590 03/28/2003

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NEW YORK, NY 10110

EXAMINER

KUMAR, PREETI

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1751

DATE MAILED: 03/28/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,231

Applicant(s)

JOHANSEN ET AL.

Examiner

Preeti Kumar

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-6 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-6 are pending.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, drawn to a method comprising contacting laundry with an enzyme, classified in class 8, subclass 133.
 - II. Claims 5-6, drawn to a composition comprising a surfactant, and an enzyme, classified in class 510, subclass 392.
3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition as claimed can be used in a materially different process of dishwashing.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and have acquired a separate status in the art because of their recognized divergent subject matter, and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Mr. Elias Lambiris on Friday March 21, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 5 and 6 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Calcaterra et al. (US 4,810,567). Calcaterra et al. teach antimicrobial fabrics utilizing graft copolymers. Calcaterra et al. teach examples of antimicrobial agents, include the polymyxins, bacitracin, circulin, the

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octapeptins, lysozyme, lysostaphin, cellulytic enzymes generally, vancomycin, ristocetin, the actinoidins and avoparcins, tyrocidin A, gramicidin S, polyoxin D, and tunicamycin. See col.9, ln.65-70. Calcaterra et al. illustrate lysostaphin enzyme binding to cotton showed excellent antimicrobial activity. See col.16, ln.11-21 and 35.

Accordingly, the broad teachings of Calcaterra et al. appear to anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Calcaterra et al. are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art, to arrive at a method of reducing malodor from laundry because Calcaterra et al. teach a method of binding lysostaphin to cotton resulting in excellent antimicrobial activity which would inherently encompass malodor reduction as well as cleaning and sanitizing.

10. Claims 1-4 are rejected under 35 U.S.C. 103(a) as obvious over Blackburn et al. (US 5,762,948).

Blackburn et al. teach moist paper or fabric wipes which afford rapid, one-step disinfection and drying of surfaces. The wipes contain a liquid disinfectant formulation typically comprising a bacteriocin as the disinfecting agent, a stabilizer for the bacteriocin, a chelating agent, a surfactant, a salt, a skin conditioner or humectant, and an agent to promote rapid drying. The bacteriocin disinfecting agent can also be combined with commonly used germicidal agents, as appropriate. See col.2, ln.23-40. Blackburn et al. teach that other peptide bacteriocins such as lysostaphin may also suitably be employed. See col.3, ln.10-15. Blackburn et al. a disposable wipe of a

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paper or cloth fabric typically with a bacteriocin-based formulation further comprising a chelating agent, a salt component, a stabilizer, a drying agent and a surfactant. The wipes provide efficient one-step disinfection and drying of surfaces and have applicability to any situation requiring sanitization of a surface. See col.2, ln.65- col.3, ln.5.

Blackburn et al. do not specifically teach a method comprising contacting laundry with an enzyme having lysostaphin activity and a method to reduce the malodor index as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a method of contacting laundry with an enzyme having lysostaphin activity and a method to reduce the malodor index as recited by the instant claims with a reasonable expectation of success, because the broad teachings of Blackburn et al. suggest a method of efficient one-step disinfection and drying of surfaces and further suggest that the method has applicability to any situation requiring sanitization of a surface in general.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 703-305-0178. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-872-9309.

Preeti Kumar
Examiner
Art Unit 1751

PK
March 23, 2003


Mark Kopec
Primary Examiner